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SENATE BILL 642

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DIANNA J. DURAN

FOR THE ELECTION CODE RECODIFICATION COMMITTEE

AN ACT

RELATING TO ELECTIONS; MAKING TECHNICAL CHANGES AND  
STANDARDIZING LANGUAGE THROUGHOUT THE ELECTION CODE; AMENDING  
AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-1-6 NMSA 1978 (being Laws 1977,  
Chapter 222, Section 1) is amended to read:

"1-1-6. RECHECK AND RECOUNT. --As used in the Election  
Code:

A. "recheck" [~~pertains to voting machines and~~] means  
a verification procedure where the center counter compartment  
door of the voting machine is opened and the results of the  
balloting as shown on the counters of the machine are compared  
with the results shown on the official returns; and

B. "recount" [~~pertains to emergency paper ballots~~

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1 ~~and absentee ballots and]~~ means a retabulation and retallying of  
2 individual ballots. "

3 Section 2. Section 1-1-8 NMSA 1978 (being Laws 1969,  
4 Chapter 240, Section 7, as amended by Laws 1993, Chapter 314,  
5 Section 2 and also by Laws 1993, Chapter 316, Section 2) is  
6 amended to read:

7 "1-1-8. ELECTION RETURNS. --As used in the Election Code,  
8 "election returns" means the certificate of the precinct board  
9 showing the total number of votes cast for each candidate, or  
10 for or against each proposed constitutional amendment or other  
11 question, and may include statements of canvass, signature  
12 rosters, [~~poll books, tally books~~] checklist of registered  
13 voters, machine printed returns and, in any canvass of returns  
14 for county candidates, the original certificates of registration  
15 in the possession of the county clerk, together with the copies  
16 of certificates of registration in the office of the county  
17 clerk. "

18 Section 3. Section 1-1-14 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 14, as amended) is amended to read:

20 "1-1-14. PUBLICATION. --As used in the Election Code,  
21 "publication", unless otherwise provided in the constitution of  
22 New Mexico or the Election Code, means publication for the  
23 required number of times in a newspaper of general circulation  
24 in the county. "Publication in Spanish" means publication for  
25 the required number of times [~~in an official Spanish language~~

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1 ~~newspaper as set forth in Section 14-11-13 NMSA 1978 or any~~  
2 ~~other Spanish language newspaper which meets the requirements of~~  
3 ~~Section 14-11-2 NMSA 1978 if such newspaper exists in the county~~  
4 ~~and is of general circulation in the county] in the Spanish~~  
5 ~~language in a newspaper of general circulation in the county"~~

6 Section 4. Section 1-2-6 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 28, as amended) is amended to read:

8 "1-2-6. PRECINCT BOARD--APPOINTMENT--TERM --

9 A. The county clerk [~~on or before fifty-five days~~  
10 ~~next preceding the primary election]~~ shall appoint the precinct  
11 board for each precinct prior to an election.

12 [~~B. The members of the precinct board shall be~~  
13 ~~appointed for a term of two years.~~

14 ~~C.]~~ B. In the event of a vacancy in the office of  
15 precinct board member by reason of death, removal from the  
16 county, disqualification, refusal to serve or excusal by the  
17 county clerk for sufficient cause, the county clerk shall  
18 appoint a qualified person to fill the vacancy [~~for the~~  
19 ~~unexpired term]~~. "

20 Section 5. Section 1-2-7 NMSA 1978 (being Laws 1969,  
21 Chapter 240, Section 29, as amended) is amended to read:

22 "1-2-7. PRECINCT BOARD--QUALIFICATION OF MEMBERS.--

23 A. In order to qualify as a member of the precinct  
24 board, a person shall:

25 (1) be a resident of the [~~representative~~

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1 ~~district and]~~ county in which the precinct where he is a voter  
2 is located;

3 (2) be able to read and write;

4 (3) have the necessary capacity to carry out  
5 his functions with acceptable skill and dispatch; and

6 (4) execute the precinct board member's oath of  
7 office.

8 B. No person shall be qualified for appointment or  
9 service on a precinct board:

10 (1) who is a candidate for any federal, state,  
11 district or county office;

12 (2) who is a spouse, parent, child, brother or  
13 sister of any candidate [~~to be voted for at the election~~] whose  
14 name will appear on the ballot at that election or

15 (3) who is a sheriff, deputy sheriff, marshal,  
16 deputy marshal or state or municipal policeman. "

17 Section 6. Section 1-2-8 NMSA 1978 (being Laws 1975,  
18 Chapter 255, Section 14, as amended) is amended to read:

19 "1-2-8. PRECINCT BOARD-- LISTS FROM MAJOR POLITICAL  
20 PARTIES. --

21 A. The county chairman of each of the major  
22 political parties may file with the county clerk at least thirty  
23 days before the date of appointment the names of not ~~more than~~  
24 ~~four voters for each precinct to be considered for appointment~~  
25 ~~as a member of the precinct board. Such names shall be those of~~

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1 ~~persons residing]~~ less than two voters who will serve as a  
2 member of a precinct board. A person chosen to serve on a  
3 precinct board shall reside in the precinct to which ~~[they are~~  
4 ~~to be]~~ he is appointed and ~~[who]~~ shall meet the qualifications  
5 required for a precinct board member. The county chairman may  
6 indicate his order of preference for each of the persons  
7 recommended for each precinct.

8 B. In the event the county chairman fails to  
9 recommnd members of the precinct board in the time required,  
10 the county clerk may appoint the board."

11 Section 7. Section 1-2-11 NMSA 1978 (being Laws 1977,  
12 Chapter 222, Section 5) is amended to read:

13 "1-2-11. PRECINCT BOARD--ASSIGNMENT.--Wherever possible,  
14 the county clerk shall assign persons appointed as precinct  
15 board members to serve in precincts ~~[wherein]~~ where they reside  
16 ~~[or in precincts located in the representative district wherein~~  
17 ~~they reside]~~. In the event of a shortage or absence of precinct  
18 board members in certain precincts, the county clerk may, in the  
19 best interest of the election process, assign appointed precinct  
20 board members to serve in any precinct in the county, provided  
21 that ~~[such]~~ the appointed board members shall not change the  
22 proportionate representation of each party on the board."

23 Section 8. Section 1-2-14 NMSA 1978 (being Laws 1969,  
24 Chapter 240, Section 34, as amended) is amended to read:

25 "1-2-14. PRECINCT BOARDS--NOTICE OF APPOINTMENT.--

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1           A. Immediately after the appointment of the precinct  
2 boards, the county clerk shall:

3                   (1) make and certify a list of the names of the  
4 appointees for each precinct, post the list in a conspicuous and  
5 accessible place in his office and keep it posted for five days  
6 and send a copy of the list by mail to the county chairman of  
7 each major political party and to the secretary of state; and

8                   (2) by mail, notify each person appointed,  
9 request his written acceptance and keep a record of all  
10 notifications and acceptances. ~~[The notice shall be accompanied~~  
11 ~~by a copy of the instructions to the precinct board.]~~

12           B. If any person appointed to a precinct board fails  
13 to accept the appointment ~~[within two weeks after the notice was~~  
14 ~~sent]~~, the county clerk shall appoint another qualified person  
15 for the precinct board. "

16           Section 9. Section 1-2-20 NMSA 1978 (being Laws 1969,  
17 Chapter 240, Section 39, as amended) is amended to read:

18           "1-2-20. MESSENGERS-- COMPENSATION. --

19                   A. The county clerk may appoint messengers to  
20 deliver to presiding judges and to county clerks ballot boxes,  
21 ~~[poll books]~~ signature rosters, checklists of registered voters  
22 keys, election supplies and other materials pertaining to the  
23 election.

24                   B. Messengers shall be paid mileage as provided in  
25 the Per Diem and Mileage Act each way over the usually traveled

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1 route. The mileage shall be paid within thirty days following  
2 the date of election if funds are available for payment. "

3 Section 10. Section 1-2-23 NMSA 1978 (being Laws 1969,  
4 Chapter 240, Section 42, as amended) is amended to read:

5 "1-2-23. CHALLENGERS--PERMITTED ACTIVITIES. --

6 A. A challenger or alternate challenger, upon  
7 presentation of his written appointment to the [~~precinct board~~]  
8 presiding judge, shall be permitted to be present from the time  
9 the precinct board convenes at the polling place until the  
10 completion of the counting and tallying of the ballots after the  
11 polls close.

12 B. A challenger or alternate challenger, for the  
13 purpose of interposing challenges, may:

14 (1) inspect the [~~registration book or~~] precinct  
15 voter list for the purpose of determining whether he desires to  
16 interpose a challenge;

17 (2) inspect the [~~poll books, registration book~~  
18 ~~or~~] signature rosters or checklist of registered voters to  
19 determine whether entries are being made in accordance with the  
20 Election Code;

21 (3) examine each voting machine before the  
22 polls are opened to compare the number on the metal seal and the  
23 numbers on the counters with the numbers on the key envelope and  
24 to see that all ballot labels are in their proper places and  
25 that the voting machine is ready for voting at the opening of

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1 the polls; and

2 (4) make in any polling place and preserve for  
3 future reference written memoranda of any action or omission on  
4 the part of any member of the precinct board. "

5 Section 11. Section 1-2-25 NMSA 1978 (being Laws 1969,  
6 Chapter 240, Section 44, as amended) is amended to read:

7 "1-2-25. CHALLENGERS--PROHIBITED ACTIVITIES. --

8 A. Challengers and alternate challengers shall not  
9 be permitted to perform any duty of a precinct board member.  
10 Challengers and alternate challengers shall not handle the  
11 ballots, [~~poll books~~] signature rosters, checklist of registered  
12 voters or voting machines or take any part in the tallying or  
13 counting of the ballots.

14 B. Only one challenger or alternate challenger for  
15 each political party in each precinct shall be permitted at one  
16 time in the room in which the voting is being conducted.

17 C. Challengers shall not interfere with the orderly  
18 conduct of the election. "

19 Section 12. Section 1-2-26 NMSA 1978 (being Laws 1969,  
20 Chapter 240, Section 45, as amended) is amended to read:

21 "1-2-26. CHALLENGERS--PENALTY. --The act of denying a  
22 challenger or alternate challenger, who has presented his  
23 written appointment to the precinct board, the right to be  
24 present at the polling place, [~~or~~] denying him the right to  
25 challenge voters and inspect the [~~registration books~~] signature

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1 rosters [~~or poll books~~] or denying him the right to witness the  
2 counting and tallying of ballots is a petty misdemeanor. "

3 Section 13. Section 1-2-29 NMSA 1978 (being Laws 1969,  
4 Chapter 240, Section 48) is amended to read:

5 "1-2-29. WATCHERS--PERMISSIBLE AND UNPERMISSIBLE  
6 ACTIVITIES.--

7 A. Upon presentation of his written appointment to  
8 the [~~precinct board~~] presiding judge, a watcher may:

9 (1) be present from the time the precinct board  
10 convenes at the polling place until the completion of the  
11 counting and tallying of the ballots after the polls close;

12 (2) be permitted to observe that the election  
13 is being conducted in accordance with the Election Code;

14 (3) examine any voting machine being used in  
15 the precinct in the same manner that challengers may examine the  
16 voting machines; and

17 (4) make in any polling place and preserve for  
18 future reference written memoranda of any action or omission on  
19 the part of any member of the precinct board charged with the  
20 performance of a duty by the Election Code.

21 B. A watcher is subject to the same prohibitions and  
22 restrictions as are placed upon challengers by the Election  
23 Code. "

24 Section 14. Section 1-2-30 NMSA 1978 (being Laws 1969,  
25 Chapter 240, Section 49) is amended to read:

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1 "1-2-30. WATCHERS--PENALTY.--The act of denying a watcher,  
2 who has presented his written appointment to the [~~precinct~~  
3 ~~board~~] presiding judge, the right to be present at the polling  
4 place, or denying him the right to witness the counting and  
5 tallying of the ballots, is a petty misdemeanor."

6 Section 15. Section 1-3-6 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 56, as amended) is amended to read:

8 "1-3-6. PRECINCTS--BOUNDARIES--PROTEST.--

9 A. Any twenty-five or more [~~voters~~] qualified  
10 electors of a precinct dissatisfied with the boundaries fixed  
11 for a precinct or location of the polling place designated by  
12 the board of county commissioners for that precinct may, at any  
13 time not less than fifty-five days prior to any general  
14 election, petition the district court of that county, setting  
15 forth the facts and reasons for their dissatisfaction and  
16 requesting that the board of county commissioners be required by  
17 ~~mandamus~~ to change the boundaries or polling place as set forth  
18 in the petition.

19 B. Upon filing of the petition, the court shall fix  
20 a time and place for hearing, which time shall not be more than  
21 twenty days from the date the petition was filed. Each member  
22 of the board of county commissioners and the person whose name  
23 appears first on the petition as a signer [~~thereof~~] shall  
24 immediately be given notice by the court of the filing of the  
25 petition and the date set for hearing.

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1           C. On the date set for the hearing on the petition,  
2 the court shall hear the evidence, decide the issues involved  
3 and issue its order as the law and facts require."

4           Section 16. Section 1-3-7 NMSA 1978 (being Laws 1969,  
5 Chapter 240, Section 57, as amended) is amended to read:

6           "1-3-7. POLLING PLACES. --

7           A. No less than one polling place shall be provided  
8 for each precinct.

9           B. The board of county commissioners shall designate  
10 as the polling place, or places as the case may be, in each  
11 precinct the most convenient and suitable public building or  
12 public school building in the precinct [~~that can be obtained~~].

13           C. If [~~no~~] a precinct does not have a public  
14 building or public school building [~~is available~~] within that  
15 precinct, the board of county commissioners shall provide some  
16 other suitable place, which shall be the most convenient and  
17 appropriate place obtainable in the precinct, considering the  
18 purpose for which it is to be used pursuant to the Election  
19 Code.

20           D. If [~~no~~] a precinct does not have a public  
21 building or public school building [~~is available in the~~] within  
22 that precinct and if there is no other suitable place obtainable  
23 in the precinct, the board of county commissioners may designate  
24 as a polling place for the precinct the most convenient and  
25 suitable building or public school building nearest to that

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1 precinct that can be obtained. [~~Provided, no~~] A polling place  
2 shall not be designated outside the boundary of the precinct as  
3 provided in this subsection until [~~such~~] that designated polling  
4 place is approved by written order of the district court of the  
5 county in which the precinct is located.

6 E. Upon application of the board of county  
7 commissioners, the governing board of any school district shall  
8 permit the use of any school building or a part thereof for  
9 registration purposes and the conduct of any election; provided,  
10 however, that the building or the part used for the election  
11 ~~complies~~ with the standards set out in the federal Voting  
12 Accessibility for the Elderly and Handicapped Act (Public Law  
13 98-435).

14 F. Public schools may be closed for elections at the  
15 discretion of local school boards. "

16 Section 17. Section 1-3-7.1 NMSA 1978 (being Laws 1984,  
17 Chapter 76, Section 1, as amended) is amended to read:

18 "1-3-7.1. ADDITIONAL POLLING PLACES. --In the interest of  
19 the convenience of the voters and providing accessibility to the  
20 polling place, the board of county commissioners may create  
21 additional polling places within the precinct upon [~~their~~] its  
22 own action or upon receipt of a petition signed by at least  
23 [~~ten~~] twenty-five percent of the registered voters of the  
24 precinct so requesting. "

25 Section 18. Section 1-3-18 NMSA 1978 (being Laws 1989,

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1 Chapter 199, Section 1) is amended to read:

2 "1-3-18. POLLING PLACES--BUILDING REQUIREMENTS--  
3 INSPECTION.--

4 A. No building used as a polling place for the  
5 conduct of an election in any class A county shall house:

6 (1) more than four precinct polling places in  
7 the conduct of any single election; and

8 (2) more than two precinct polling places in  
9 any single room.

10 B. The restrictions set forth in Subsection A of  
11 this section may be waived with the approval of the director of  
12 the state bureau of elections.

13 C. The location of each precinct polling place  
14 within the building shall be clearly designated by appropriate  
15 signs, prominently and clearly displayed [~~at a height no less~~  
16 ~~than six feet from the floor~~]. Signs for each precinct polling  
17 place shall also be clearly displayed outside the building where  
18 polling takes place.

19 D. Not less than thirty days prior to any election  
20 at which the building is intended for use as a polling place,  
21 the county clerk or his designated representative shall  
22 physically inspect each [~~such~~] facility to determine its  
23 suitability for precinct polling places and its capability of  
24 handling heavy voter traffic in the most expeditious manner with  
25 a maximum efficiency and minimum discomfort of the voter. In

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1 the event the building is found to meet these standards, the  
2 county clerk shall certify for the record its acceptability.

3 E. Each polling place will be furnished and have  
4 available equipment necessary to ~~[assist voters in reading the~~  
5 ~~ballot]~~ conduct the election. "

6 Section 19. Section 1-4-15 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 71, as amended) is amended to read:

8 "1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION. --

9 A. A voter may change his designated party  
10 affiliation by executing a certificate of registration for  
11 change of party affiliation.

12 B. A voter who has previously declined to designate  
13 a party affiliation but who desires to designate a party  
14 affiliation shall ~~[make an original designation of party~~  
15 ~~affiliation by executing]~~ execute a certificate of registration  
16 ~~[for designation of]~~ indicating his new party affiliation and  
17 file it with the county clerk. "

18 Section 20. Section 1-4-16 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 72, as amended by Laws 1993, Chapter 314,  
20 Section 15 and also by Laws 1993, Chapter 316, Section 15) is  
21 amended to read:

22 "1-4-16. REGISTRATION--WHEN PARTY AFFILIATION SHALL NOT BE  
23 MADE. --

24 A. No designation of party affiliation shall be made  
25 or changed on an existing certificate of registration at any

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1 time during which registration is closed, or if the voter has  
2 voted early or by absentee ballot.

3 B. Every person appearing as a candidate on the  
4 primary or general election ballot shall be a candidate only  
5 under the name and party affiliation designation appearing on  
6 his existing certificate of registration on file in the county  
7 clerk's office on the date of the governor's proclamation of a  
8 primary election. "

9 Section 21. Section 1-4-17 NMSA 1978 (being Laws 1969,  
10 Chapter 240, Section 73, as amended by Laws 1993, Chapter 10,  
11 Section 1 and by Laws 1993, Chapter 314, Section 16 and also by  
12 Laws 1993, Chapter 316, Section 16) is amended to read:

13 "1-4-17. REGISTRATION--CHANGE OF RESIDENCE WITHIN SAME  
14 COUNTY. --

15 A. A voter who has changed his residence within the  
16 same county shall complete a certificate of registration to  
17 change his registered residence address or file a change of  
18 residence notification with the county clerk on a form approved  
19 by the secretary of state.

20 B. No change of registered residence address shall  
21 be made in any period during which registration is closed or if  
22 the voter has voted early; however, the county clerk may accept  
23 applications for such change but shall not process them until  
24 the registration period is open.

25 C. The application for or notification of change of

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1 registered residence shall be filed with the county clerk, and  
2 the previous registration shall be retained for six years in a  
3 file established for that purpose."

4 Section 22. Section 1-4-30 NMSA 1978 (being Laws 1969,  
5 Chapter 240, Section 86, as amended by Laws 1993, Chapter 314,  
6 Section 26 and also by Laws 1993, Chapter 316, Section 26) is  
7 amended to read:

8 "1-4-30. CANCELLATION OF REGISTRATION--VOTER'S REQUEST.--

9 A. The county clerk shall cancel a certificate of  
10 registration only upon the request of a voter [~~only for the~~  
11 ~~following reasons:~~

12 (1) ~~when the voter changes his registered~~  
13 ~~residence address to another county within the state; and~~

14 (2) ~~when the voter moves to another state].~~

15 B. [~~An application by~~] A request by a voter to  
16 cancel his registration shall be [~~in writing and subscribed~~  
17 ~~before a registration officer or a person authorized to~~  
18 ~~administer oaths or on a form prescribed by the secretary of~~  
19 ~~state] submitted in writing to the county clerk~~

20 C. Upon receipt of the written request for  
21 cancellation of registration, the county clerk shall cancel the  
22 voter's registration and shall [~~forthwith~~] immediately mail to  
23 [~~such~~] the person a notice of [~~such~~] the cancellation and the  
24 date of cancellation.

25 D. The voter's certificate of registration shall be

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1 deemed canceled upon receipt by the county clerk of the voter's  
2 written request [~~therefor and when such request is for the~~  
3 ~~reasons specified in Subsection A of this section~~]. "

4 Section 23. Section 1-6-4 NMSA 1978 (being Laws 1969,  
5 Chapter 240, Section 130, as amended by Laws 1993, Chapter 19,  
6 Section 2 and by Laws 1993, Chapter 20, Section 1 and by Laws  
7 1993, Chapter 21, Section 2 and by Laws 1993, Chapter 314,  
8 Section 42 and also by Laws 1993, Chapter 316, Section 42) is  
9 amended to read:

10 "1-6-4. ABSENTEE BALLOT APPLICATION. --

11 A. Application by a federal qualified elector for an  
12 absentee ballot shall be made on the official postcard form  
13 prescribed [~~or authorized by the federal government to the~~  
14 ~~county clerk of the county of his residence~~] in accordance with  
15 the federal Uniformed and Overseas Citizens Absentee Voting Act

16 B. Application by a voter for an absentee ballot  
17 shall be made only on a form prescribed, printed and furnished  
18 by the secretary of state to the county clerk of the county in  
19 which he resides. The form shall identify the applicant and  
20 contain information [~~to establish his qualification~~] for  
21 issuance of an absentee ballot under the Absent Voter Act.

22 C. Each application for an absentee ballot shall be  
23 subscribed by the applicant.

24 D. Any major party may furnish an application for an  
25 absentee ballot to a voter on a form prescribed by the secretary

1 of state."

2 Section 24. Section 1-6-5 NMSA 1978 (being Laws 1969,  
3 Chapter 240, Section 131, as amended by Laws 1993, Chapter 314,  
4 Section 43 and also by Laws 1993, Chapter 316, Section 43) is  
5 amended to read:

6 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--  
7 [~~MAKING~~] MARKING AND DELIVERY OF BALLOT IN PERSON. --

8 A. The county clerk shall mark each completed  
9 absentee ballot application with the date and time of receipt in  
10 the clerk's office and enter the required information in the  
11 absentee ballot register. The county clerk shall then determine  
12 if the applicant is a voter, an absent uniformed services voter  
13 or an overseas voter.

14 B. If the applicant has no valid certificate of  
15 registration on file in the county and he is not a federal  
16 qualified elector or if the applicant states he is a federal  
17 qualified elector but his application indicates he is not a  
18 federal qualified elector, no absentee ballot shall be issued  
19 and the county clerk shall mark the application "rejected" and  
20 file the application in a separate file from those accepted.

21 C. The county clerk shall notify in writing each  
22 applicant of the fact of acceptance or rejection of his  
23 application and, if rejected, shall explain why the application  
24 was rejected.

25 D. If the applicant is determined to be a voter or a

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1 federal qualified elector, the county clerk shall mark the  
2 application "accepted" and deliver or mail to the applicant an  
3 absentee ballot and the required envelopes for use in returning  
4 the ballot. Acceptance of an application of a federal qualified  
5 elector constitutes registration for the election in which the  
6 ballot is to be cast. Acceptance of an application from an  
7 overseas voter who is not an absent uniformed services voter  
8 constitutes a request for changing information on the  
9 certificate of registration of any such voter. No absent voter  
10 shall be permitted to change his party affiliation during those  
11 periods when change of party affiliation is prohibited by the  
12 Election Code. Upon delivery or mailing of an absentee ballot  
13 to any applicant who is a voter, an appropriate designation  
14 shall be made on the signature line of the ~~[signature roster~~  
15 ~~next to the name of the person who has been sent an absentee~~  
16 ~~ballot]~~ absent voter list and checklist of registered voters

17 E. If an application for an absentee ballot is  
18 delivered in person to the county clerk and is accepted, the  
19 county clerk shall deliver the absentee ballot and it shall be  
20 marked by the applicant in a voting booth of a type prescribed  
21 by the secretary of state in the courthouse, sealed in the  
22 proper envelopes and otherwise properly executed and returned to  
23 the county clerk or his authorized representative before the  
24 applicant leaves the office of the county clerk. The act of  
25 marking the absentee ballot in the office of the county clerk

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1 shall be a convenience to the voter in the delivery of the  
2 absentee ballot and does not make the office of the county clerk  
3 a polling place subject to the requirements of a polling place  
4 in the Election Code other than is provided in this subsection.  
5 It shall be unlawful to solicit votes, display or otherwise make  
6 accessible any posters, signs or other forms of campaign  
7 literature whatsoever in the clerk's office. Absentee ballots  
8 may be marked in person during the regular hours and days of  
9 business at the county clerk's office from 8:00 a.m. on the  
10 fortieth day preceding the election up until 5:00 p.m. on the  
11 Saturday immediately prior to the date of the election. In  
12 marking the absentee ballot, the voter may be assisted by one  
13 person of the voter's own choice ~~[upon the execution with the~~  
14 ~~county clerk of an affidavit for assistance stating therein that~~  
15 ~~the voter meets at least one of the conditions for receiving~~  
16 ~~such assistance as is set forth by the provisions of Section~~  
17 ~~1-12-12 NMSA 1978.~~

18 ~~F. Absentee ballots shall be air mailed to~~  
19 ~~applicants temporarily domiciled inside or outside the~~  
20 ~~continental limits of the United States not later than on the~~  
21 ~~Thursday immediately prior to the date of the election] as~~  
22 ~~provided in Section 1-12-15 NMSA 1978.~~

23 F. Absentee ballots shall be mailed no later than  
24 the Thursday prior to the date of the election to applicants  
25 temporarily domiciled inside or outside the boundaries of the

1 state and no later than fifteen days prior to the date of the  
2 election to applicants temporarily domiciled outside the  
3 continental boundaries of the United States.

4 G. No absentee ballot shall be delivered or mailed  
5 to any person other than the applicant for such ballot.

6 H. The county clerk shall accept and process with  
7 respect to a primary or general election for any federal office,  
8 any otherwise valid voter registration application from an  
9 absent uniformed services voter or overseas voter if the  
10 application is received not less than thirty days before the  
11 election. The county clerk shall also accept and process  
12 federal write-in absentee ballots from overseas voters in  
13 general elections for federal offices in accordance with the  
14 provisions of Section 103 of the federal Uniformed and Overseas  
15 Citizens Absentee Voting Act. "

16 Section 25. Section 1-6-6 NMSA 1978 (being Laws 1969,  
17 Chapter 240, Section 132, as amended) is amended to read:

18 "1-6-6. ABSENTEE BALLOT REGISTER. --

19 A. For each election, the county clerk shall keep an  
20 "absentee ballot register" in which he shall enter:

21 (1) the name and county address of each  
22 absentee ballot applicant;

23 (2) the date and time of receipt of the  
24 application;

25 (3) whether the application was accepted or

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1 rejected;

2 (4) the date of delivery or mailing of an  
3 absentee ballot to the applicant;

4 (5) the applicant's precinct;

5 (6) whether the applicant is a voter, [~~a~~  
6 ~~federal voter~~] a federal qualified elector or an overseas  
7 citizen voter; and

8 (7) the date and time the completed ballot was  
9 received from the applicant by the county clerk.

10 B. Within twenty-four hours after receipt of a  
11 voter's application for an absentee ballot, the county clerk  
12 shall mail either the ballot or notice of rejection.

13 C. The absentee ballot register is a public record  
14 open to public inspection in the county clerk's office during  
15 regular office hours.

16 D. The county clerk shall deliver to the [~~absentee~~]  
17 absent voter precinct board on election day a complete list of  
18 all absentee ballot applicants with applicable information shown  
19 in the absentee ballot register for each applicant up to noon of  
20 the day preceding the election. The county clerk shall deliver  
21 [~~a signature roster~~] an absent voter list and checklist of  
22 registered voters containing the same information as the lists  
23 to the [~~absentee~~] board.

24 E. The county clerk shall transmit to the secretary  
25 of state and to the county chairman of each of the major

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1 political parties in the county a complete copy of entries made  
2 in the absentee ballot register. Such transmissions shall be  
3 made once each week beginning four weeks immediately prior to  
4 the election. A final copy shall be transmitted on the Friday  
5 immediately following the election. "

6 Section 26. Section 1-6-7 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 133, as amended) is amended to read:

8 "1-6-7. FORM OF ABSENTEE BALLOT- -TIME FOR PRINTING. -- As  
9 soon as candidates and questions to be voted upon have been  
10 determined for each election, the county clerk shall procure a  
11 supply of suitable absentee ballots. The absentee ballot shall  
12 be numbered and shall be, as nearly as practicable, in the same  
13 form as prescribed by the secretary of state for emergency  
14 ballots. However, to reduce weight and bulk for transport of  
15 absentee ballots, the size and weight of the paper for  
16 envelopes, ballots and instructions shall be reduced as much as  
17 possible. Absentee ballots shall be printed at least [~~forty~~]  
18 forty-five days prior to the date of a primary election and  
19 [~~forty-nine~~] forty-five days prior to the date of a general  
20 election. Absentee ballots for any other election shall be  
21 printed at least thirty-five days prior to the date of the  
22 election. "

23 Section 27. Section 1-6-10 NMSA 1978 (being Laws 1969,  
24 Chapter 240, Section 136, as amended) is amended to read:

25 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY COUNTY CLERK. --

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1           A. The county clerk shall mark on each completed  
2 official mailing envelope the date and time of receipt in the  
3 clerk's office, record this information in the absentee ballot  
4 register and safely keep the official mailing envelope unopened  
5 in a locked ballot box ~~[until it is delivered on election day to~~  
6 ~~the proper precinct board or until it is canceled and destroyed~~  
7 ~~in accordance with law]~~.

8           B. The county clerk shall accept completed official  
9 mailing envelopes until 7:00 p.m. on election day. Any  
10 completed official mailing envelope received after that time  
11 shall not be delivered to a precinct board but shall be  
12 preserved by the county clerk until the time for election  
13 contests has expired. In the absence of a restraining order  
14 after expiration of the time for election contests, the county  
15 clerk shall destroy all late official mailing envelopes without  
16 opening or permitting the contents to be examined, cast, counted  
17 or canvassed. Before their destruction, the county clerk shall  
18 count the numbers of late ballots from voters, ~~[federal voters]~~  
19 overseas citizen voters and federal qualified electors and  
20 report the number from each category to the secretary of state.

21           C. At 5:00 p.m. on the Monday immediately preceding  
22 the date of election, the county clerk shall record the numbers  
23 of the unused absentee ballots and shall publicly destroy in the  
24 county clerk's office all such unused ballots. The county clerk  
25 shall execute a certificate of such destruction, which shall

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1 include the numbers on the ballots destroyed. A copy of the  
2 certificate of destruction shall be sent to the secretary of  
3 state.

4 D. At 7:00 p.m. on election day, the county clerk  
5 shall record the number of unused absentee ballots retained to  
6 comply with the provisions of Section 1-6-16.2 NMSA 1978 and  
7 publicly destroy in the county clerk's office all unused  
8 ballots. The county clerk shall execute a certificate of  
9 destruction, which shall be sent to the secretary of state."

10 Section 28. Section 1-6-11 NMSA 1978 (being Laws 1969,  
11 Chapter 240, Section 137, as amended) is amended to read:

12 "1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER  
13 PRECINCTS. --

14 A. On election day, the county clerk shall deliver  
15 the absentee ballots received by him prior to 7:00 p.m. on  
16 election day to the special deputy county clerks for delivery to  
17 the absent voter precinct boards. The absentee ballots for each  
18 absent voter precinct shall be separately wrapped, and the  
19 special deputy county clerk shall receipt for all ballots taken  
20 by him for the county clerk. Upon delivery of the absentee  
21 ballots to the absent voter precinct board, the special deputy  
22 county clerk shall remain in the polling place of the absent  
23 voter precinct until he has observed the opening of the official  
24 mailing envelope, the deposit of the ballot in the locked ballot  
25 box and the listing of the names on the official mailing

.113462.2

1 envelope in the signature rosters. Upon such delivery of  
2 absentee ballots, the special deputy county clerk shall obtain a  
3 receipt executed by the presiding judge and each election judge  
4 and he shall return such receipt to the county clerk for filing.  
5 The receipts shall specify the number of envelopes received by  
6 the special deputy county clerk from the county clerk for each  
7 absent voter precinct and the number of envelopes received by  
8 the absent voter precinct board from the special deputy county  
9 clerk.

10 B. On election day, the county clerk shall deliver  
11 the absentee ballots received by him prior to 7:00 p.m. on  
12 election day to the absent voter precinct board. Upon delivery  
13 of absentee ballots, the county clerk shall obtain a receipt  
14 executed by the presiding judge and each election judge. The  
15 receipts shall specify the number of envelopes delivered by the  
16 county clerk and the number of envelopes received by the absent  
17 voter precinct board."

18 Section 29. Section 1-6-14 NMSA 1978 (being Laws 1971,  
19 Chapter 317, Section 11, as amended) is amended to read:

20 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER  
21 PRECINCT BOARDS. --

22 A. Before opening any official mailing envelope, the  
23 presiding judge and the election judges shall determine that the  
24 required information has been completed on the reverse side of  
25 the official mailing envelope.

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1           B. If the voter's signature is missing, the  
2           presiding judge shall write "Rejected" on the front of the  
3           official mailing envelope. The election ~~[clerks]~~ officials  
4           shall enter the voter's name in the ~~[signature rosters and shall~~  
5           ~~write the notation "Rejected--Missing Signature" in the~~  
6           ~~"Notations" column of the signature rosters]~~ absent voter list  
7           and checklist of registered voters. The presiding judge shall  
8           place the official mailing envelope unopened in an envelope  
9           provided for rejected ballots, seal the envelope and write the  
10          voter's name on the front of the envelope and deposit it in the  
11          locked ballot box.

12           C. The accredited challengers may examine the  
13          official mailing envelope and may challenge the ballot of any  
14          absent voter for the following reasons:

15                   (1) the official mailing envelope has been  
16                   opened prior to being received by the precinct board; or

17                   (2) the person offering to vote is not a  
18                   ~~[federal voter]~~ federal qualified elector, overseas citizen  
19                   voter or voter as provided in the Election Code.

20           Upon the challenge of an absentee ballot, the election  
21           ~~[judges]~~ officials and the presiding judge shall follow the same  
22           procedure as when ballots are challenged when a person attempts  
23           to vote in person. If a challenge is upheld, the official  
24           mailing envelope shall not be opened but shall be placed in an  
25           envelope provided for challenged ballots. The same procedure

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1 shall be followed in canvassing and determining the validity of  
2 challenged absentee ballots as with other challenged ballots.

3 D. If the official mailing envelopes have been  
4 properly subscribed and the voters have not been challenged:

5 (1) the election [~~judges~~] officials shall open  
6 the official mailing envelopes and deposit the ballots in their  
7 still-sealed official inner envelopes in the locked ballot box;  
8 and

9 (2) the election [~~clerks~~] officials shall  
10 [~~enter~~] mark the absent voter's name and residence address as  
11 shown on the official mailing envelope in the [~~signature~~  
12 ~~rosters~~] absent voter list and checklist of registered voters  
13 and shall mark the notation "AB" opposite the voter's name in  
14 the "Notations" column of the [~~signature rosters~~] checklist.

15 E. Prior to the closing of the polls, the election  
16 [~~judges~~] officials and the presiding judge may either remove the  
17 absentee ballots from the official inner envelopes and count and  
18 tally the results of absentee balloting or, under the personal  
19 supervision of the presiding judge and one election [~~judge~~]  
20 official from each party, register the results of each absentee  
21 ballot on a voting machine the same as if the absent voter had  
22 been present and voted in person. It [~~shall be~~] is unlawful for  
23 any person to disclose the results of such count and tally or  
24 such registration on a voting machine of absentee ballots prior  
25 to the closing of the polls.

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1 F. Absentee ballots shall be counted and tallied or  
2 registered on a [~~lever voting~~] machine [~~or an electronic voting~~  
3 ~~machine~~] as provided in the Election Code [~~provided that any~~  
4 ~~county with a population in excess of one hundred thousand shall~~  
5 ~~count and tally or register absentee ballots on an electronic~~  
6 ~~voting machine~~].

7 G. Absent voter precinct polls shall close at the  
8 time prescribed by the Election Code for other polling places,  
9 and the results of the election shall be certified as prescribed  
10 by the secretary of state. "

11 Section 30. Section 1-6-16 NMSA 1978 (being Laws 1969,  
12 Chapter 240, Section 141, as amended by Laws 1989, Chapter 368,  
13 Section 2 and also by Laws 1989, Chapter 392, Section 15) is  
14 amended to read:

15 "1-6-16. VOTING IN PERSON PROHIBITED. --

16 A. Except as provided in Section 1-6-16.1 NMSA 1978  
17 no person who has been issued an absent voter ballot shall vote  
18 in person at his [~~precinct poll~~] polling place.

19 B. At any time prior to 5:00 p. m. on the Monday  
20 immediately preceding the date of the election, any person whose  
21 absentee ballot application has been accepted and who was mailed  
22 an absentee ballot but who has not received or voted the  
23 absentee ballot may execute, in the office of the county clerk  
24 of the county where he is registered to vote, a sworn affidavit  
25 stating that he did not receive or vote his absentee ballot.

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1 ~~[Upon receipt of the sworn affidavit, the county clerk shall~~  
2 ~~issue the voter a replacement absentee ballot.]~~

3 C. The secretary of state shall prescribe the form  
4 of the affidavit and the manner in which the county clerk shall  
5 void the first ballot mailed to the applicant. "

6 Section 31. Section 1-6-16.2 NMSA 1978 (being Laws 1993,  
7 Chapter 353, Section 1) is amended to read:

8 "1-6-16.2. ADDITIONAL EMERGENCY PROCEDURE FOR VOTING. --

9 A. After the close of the period for requesting  
10 absentee voter ballots by mail, any voter who is unable to go to  
11 the polls due to unforeseen illness or disability resulting in  
12 his confinement in a hospital, sanatorium, nursing home or  
13 residence and who is unable to vote at his polling place, voting  
14 booth or voting apparatus or machinery may request in writing  
15 that ~~[an alternative]~~ a ballot be made available to him. The  
16 written request shall be signed by the voter and a health care  
17 provider under penalty of perjury.

18 B. The ~~[alternative]~~ absentee ballot shall be made  
19 available by the clerk of the county in which the voter resides  
20 to any authorized representative of the voter who through his  
21 representative has presented the written request to the office  
22 of the clerk.

23 C. Before releasing the ~~[alternative]~~ absentee  
24 ballot, the county clerk shall compare the signature on the  
25 written request with the signature on the voter's ~~[affidavit]~~

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1 certificate of registration. If the county clerk determines  
2 that the signature on the written request is not the signature  
3 of the voter, he shall reject the request for an ~~[alternative]~~  
4 absentee ballot.

5 D. The voter shall mark the ~~[alternative]~~ absentee  
6 ballot, place it in an identification envelope similar to that  
7 used for absentee ballots, fill out and sign the envelope and  
8 return the ballot to the office of the clerk of the county in  
9 which the voter resides no later than the time of closing of the  
10 polls on election day. The voter's name shall be compared to  
11 the roster of voters and the ballot shall only be counted if  
12 there is no signature for that voter on the roster of the  
13 precinct where that voter's name appears.

14 ~~[E.—Alternative ballots shall be processed and~~  
15 ~~counted in the same manner as absentee ballots.~~

16 ~~F.—The secretary of state shall prescribe the form~~  
17 ~~of alternative ballots and shall distribute an appropriate~~  
18 ~~number of alternative ballots to each county clerk.]"~~

19 Section 32. Section 1-6-20 NMSA 1978 (being Laws 1969,  
20 Chapter 54, Section 3, as amended) is amended to read:

21 "1-6-20. CREATION OF ABSENT VOTER PRECINCT. -- ~~[A.]~~ The  
22 board of county commissioners shall adopt a resolution creating,  
23 for absent voting purposes only, an absent voter precinct ~~for~~  
24 ~~each state representative district in the]~~ that shall be  
25 identified by the name of that county. The boundaries of ~~[such]~~

.113462.2

1 the absent voter precinct shall coincide with the boundaries of  
2 the state [~~representative~~] district that it represents, except  
3 for multicounty [~~representative~~] districts. In multicounty  
4 [~~representative~~] districts, the boundaries of the absent voter  
5 precinct in each county shall coincide with the boundaries of  
6 that portion of the [~~representative~~] district [~~lying~~] that it  
7 represents that lie within the county.

8 [~~B. Absent voter precincts shall be identified by~~  
9 ~~the name of the county and the state representative district~~  
10 ~~number. In the case of multicounty representative districts,~~  
11 ~~the absent voter precinct in each county shall be distinguished~~  
12 ~~by the name of the county.]"~~

13 Section 33. Section 1-9-5 NMSA 1978 (being Laws 1969,  
14 Chapter 240, Section 188, as amended) is amended to read:

15 "1-9-5. REQUIREMENT TO PURCHASE AND USE VOTING  
16 MACHINES. --

17 A. Voting machines shall be used in all precincts in  
18 all statewide elections.

19 B. The county clerk of each county shall provide one  
20 voting machine in each precinct for use in the general and  
21 primary elections when the total number of [~~registered voters in~~  
22 ~~that precinct amounted to less than four hundred at the close of~~  
23 ~~registration~~] votes cast in the previous general election was  
24 less than four hundred.

25 C. At least one additional voting machine shall be

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1 provided in such precinct for every four hundred ~~registered~~  
2 voters] votes cast in the previous general election in that  
3 precinct.

4 D. When authorized by the state board of finance,  
5 the board of county commissioners may acquire new or previously  
6 owned voting or electronic vote tabulating machines, as tested  
7 and approved by the secretary of state pursuant to the  
8 provisions of Section 1-9-14 NMSA 1978, which machines may be  
9 used in any election for public office. The acquisition of  
10 these machines may be in excess of the number provided in this  
11 section.

12 E. Except for intercounty acquisitions of equipment  
13 approved by the secretary of state, a previously owned voting or  
14 electronic vote tabulating machine shall have a warranty equal  
15 to the warranty required of a new voting or electronic vote  
16 tabulating machine. "

17 Section 34. Section 1-11-2 NMSA 1978 (being Laws 1969,  
18 Chapter 240, Section 212, as amended) is amended to read:

19 "1-11-2. CONTENTS OF PROCLAMATION. -- The proclamation  
20 shall:

- 21 A. give notice of the election;
- 22 B. set forth the purpose of the election;
- 23 C. list the offices to be filled;
- 24 D. list all properly certified candidates for each  
25 of the offices to be filled;

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1 E. list ~~[the]~~ any declared write-in candidate's name  
2 and party affiliation; and

3 ~~[F. list the names of all precinct board members and~~  
4 ~~the precinct to which they are appointed; and~~

5 ~~G.]~~ F. give the address or location of the polling  
6 place in each precinct where the election is to be held. "

7 Section 35. Section 1-12-5 NMSA 1978 (being Laws 1969,  
8 Chapter 240, Section 244, as amended) is amended to read:

9 "1-12-5. CONDUCT OF ELECTION--STATE POLICE--OTHER PEACE  
10 OFFICERS. --

11 A. ~~[Any]~~ A member of the county clerk's office, the  
12 New Mexico state police or any other peace officer may enter a  
13 polling place upon request of a presiding judge or an election  
14 judge for the purpose of observing the conduct of the election.

15 B. ~~[No]~~ A member of the county clerk's office, the  
16 New Mexico state police or any other peace officer shall not  
17 interfere in any way with a member of the precinct board, a  
18 voter or the conduct of the election except to assist in  
19 maintaining order and orderly control of access when requested  
20 by the secretary of state's office, the county clerk's office,  
21 the presiding judge or an election judge.

22 C. ~~[Any]~~ A member of the county clerk's office, the  
23 New Mexico state police or any other peace officer ~~[violating]~~  
24 who violates Subsection B of this section is guilty of a petty  
25 misdemeanor and in addition to any other penalty provided by law

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1 shall be subject to dismissal and is ineligible for  
2 reinstatement. "

3 Section 36. Section 1-12-10 NMSA 1978 (being Laws 1969,  
4 Chapter 240, Section 249, as amended) is amended to read:

5 "1-12-10. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS,  
6 SIGNATURE.--When a voter presents himself at ~~[the polls]~~ his  
7 regular polling place to vote, he shall announce his name and  
8 address in an audible tone of voice. When an election ~~[judge]~~  
9 official finds the voter's name in the signature roster, he  
10 shall in like manner repeat the name of the voter. The voter  
11 shall then sign his name or make his mark on the signature line  
12 in the copy of the signature roster to be returned to the county  
13 clerk. Upon the voter's name or mark being written in the  
14 signature roster, a challenge may be interposed as provided in  
15 the Election Code. "

16 Section 37. Section 1-12-11 NMSA 1978 (being Laws 1969,  
17 Chapter 240, Section 250, as amended) is amended to read:

18 "1-12-11. CONDUCT OF ELECTION--ENTRIES BY PRECINCT  
19 BOARD.--If no challenge is interposed, an election ~~[judge]~~  
20 official shall write or stamp in the space provided ~~[therefor]~~  
21 on the signature roster the number of the paper ballot cast by  
22 the voter or the vote number shown on the public counter of the  
23 voting machine. "

24 Section 38. Section 1-12-13 NMSA 1978 (being Laws 1969,  
25 Chapter 240, Section 266, as amended) is amended to read:

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1 "1-12-13. CONDUCT OF ELECTION--AID OR ASSISTANCE TO VOTER  
2 IN MARKING BALLOT. --

3 A. When a voter who is eligible for assistance  
4 pursuant to Section 1-12-12 NMSA 1978 requires assistance in  
5 marking his paper ballot or recording his vote by voting  
6 machine, the voter shall announce this fact in an audible tone  
7 before receiving his paper ballot or before entering the voting  
8 machine.

9 B. The voter's request for assistance shall be noted  
10 by his name in the signature roster and checklist of registered  
11 voters and initialed by the presiding judge.

12 C. After noting the request for assistance in the  
13 signature roster and checklist of registered voters, the voter  
14 shall be permitted assistance in marking his paper ballot or  
15 recording his vote as provided in Section 1-12-15 NMSA 1978.

16 D. Any person who [swears] falsely [~~in order to~~  
17 ~~secure assistance~~] requests assistance is guilty of perjury. "

18 Section 39. Section 1-12-20 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 273, as amended) is amended to read:

20 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES. -- A  
21 challenge may be interposed by a member of the precinct board or  
22 by a party challenger for the following reasons:

23 A. the person presenting himself to vote is not  
24 registered;

25 [~~B. the person presenting himself to vote is listed~~

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1 ~~on the purge list placed with the signature rosters or is listed~~  
2 ~~among those persons in the precinct from whom an absentee ballot~~  
3 ~~was received;~~

4 ~~C.]~~ B. the person presenting himself to vote is  
5 improperly registered because he is not a qualified elector;

6 ~~D.]~~ C. in the case of a primary election, the  
7 person presenting himself to vote is not affiliated with a  
8 political party represented on the ballot; or

9 ~~E.]~~ D. in the case of an absentee ballot, the  
10 official outer envelope of the absentee voter has been opened  
11 prior to the counting of the ballots. "

12 Section 40. Section 1-12-21 NMSA 1978 (being Laws 1969,  
13 Chapter 240, Section 274, as amended) is amended to read:

14 "1-12-21. CONDUCT OF ELECTION--CHALLENGES--ENTRIES. -- When  
15 a challenge is interposed, the election ~~[clerks]~~ officials shall  
16 enter the word "CHALLENGED" under the notation headings in the  
17 signature ~~[rosters]~~ roster and checklist of registered voters "

18 Section 41. Section 1-12-22 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 275, as amended) is amended to read:

20 "1-12-22. CONDUCT OF ELECTION--CHALLENGES--DISPOSITION. --  
21 Challenges shall be handled as follows:

22 A. if the challenge is unanimously affirmed by the  
23 presiding judge and the two election judges, the person shall  
24 nevertheless be furnished a paper ballot, regardless of whether  
25 ~~[or not]~~ voting machines are being used in the precinct, and he

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1 shall be allowed to mark it. The paper ballot shall then be  
2 returned to the presiding judge, who shall announce the voter's  
3 name in an audible tone and in the voter's presence and place  
4 the challenged ballot in an envelope marked "Rejected". Then  
5 this envelope shall be sealed, and the voter's name shall be  
6 written on the envelope. The envelope containing the rejected  
7 ballot shall then be deposited in the ballot box and shall not  
8 be counted. The election clerks shall enter such voter's name  
9 in the [~~signature roster~~] checklist of registered voters to be  
10 sent to the secretary of state, and the voter shall sign his  
11 name in the other signature roster. The word "Affirmed" shall  
12 be written opposite [~~such~~] the voter's name under the challenge  
13 notation in [~~both~~] the signature [~~rosters~~] roster and checklist  
14 of registered voters together with the number of the ballot so  
15 furnished; or

16 B. if the challenge is not unanimously affirmed by  
17 the presiding judge and the two election judges, the voter shall  
18 be allowed to vote, and the election clerks shall enter the  
19 words "Not Affirmed" under the challenge notation after the  
20 voter's name in the signature roster and the checklist of  
21 registered voters. "

22 Section 42. Section 1-12-23 NMSA 1978 (being Laws 1969,  
23 Chapter 240, Section 277, as amended) is amended to read:

24 "1-12-23. CONDUCT OF ELECTION--VOTING MACHINES--  
25 INSTRUCTIONS.--Before each voter enters the voting machine, a

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1 member of the precinct board shall, so far as possible, instruct  
2 him on how to operate the voting machine [~~illustrate its~~  
3 ~~operation on the model~~] and call his attention to the posted  
4 sample ballot. If any voter, after entering the voting machine  
5 and before drawing its curtain, asks for further information  
6 regarding the machine's operation, the two election judges shall  
7 give him the necessary information and retire before the curtain  
8 is drawn."

9 Section 43. Section 1-12-28 NMSA 1978 (being Laws 1969,  
10 Chapter 240, Section 283, as amended) is amended to read:

11 "1-12-28. CONDUCT OF ELECTION--ELECTION CERTIFICATE.--  
12 Immediately upon the closing of the polls, the precinct board  
13 shall complete and sign a certificate [~~which shall state:--~~"We  
14 certify the \_\_\_\_\_ election complete with the voting  
15 of voting machine number \_\_\_\_\_ by voter number  
16 \_\_\_\_\_~~on the signature roster~~] on the cover of the  
17 signature roster and checklist of registered voters "

18 Section 44. Section 1-12-29 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 287, as amended) is amended to read:

20 "1-12-29. CONDUCT OF ELECTION--COUNTING AND TALLYING--WHO  
21 MAY BE PRESENT.--Only the members of the precinct board,  
22 candidates or their representatives, representatives of the news  
23 media and lawfully appointed challengers and watchers may be  
24 present while the votes are being counted and tallied. Only  
25 members of the precinct board shall handle ~~ballots, signature~~

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1 ~~rosters or~~ the signature roster and checklist of registered  
2 voters, tally sheets or take part in the counting and tallying. "

3 Section 45. Section 1-12-30 NMSA 1978 (being Laws 1969,  
4 Chapter 240, Section 289, as amended) is amended to read:

5 "1-12-30. CONDUCT OF ELECTION--DISPOSITION OF ~~[POLL BOOK]~~  
6 SIGNATURE ROSTER AND MACHINE PRINTED RETURN REPORTING UNOFFICIAL  
7 RETURNS. --

8 A. After all certificates have been executed, the  
9 presiding judge and the two election judges shall place the  
10 checklist of registered voters voting, one copy of the tally  
11 sheets, if used, and one copy of the machine-printed returns in  
12 the stamped, addressed envelope provided for that purpose and  
13 immediately mail it to the secretary of state.

14 B. The signature roster, ~~[the machine printed~~  
15 ~~returns and the direct recording electronic cartridge for~~  
16 ~~electronic and marksense machines]~~ the tape that reflects the  
17 opening totals, two copies of the printed returns, the used  
18 voting machine entry permits, the original of the tally sheets,  
19 if used, and the voting machine cartridge shall be returned to  
20 the county clerk. ~~[The signature roster, the machine printed~~  
21 ~~returns and the direct recording electronic cartridge for~~  
22 ~~electronic and marksense machines shall not be placed in the~~  
23 ~~ballot box.]~~

24 C. One legible copy of the machine-printed return  
25 from each voting machine shall be posted on the outside of the

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1 entrance door to the polling place. Signature rosters and  
2 machine printed returns in the custody of the county clerk may  
3 be destroyed three years after the election to which they apply.

4 D. The county clerk shall report the unofficial  
5 total returns for the county to the secretary of state within  
6 ten hours after the polls close."

7 Section 46. Section 1-12-31 NMSA 1978 (being Laws 1969,  
8 Chapter 240, Section 291, as amended) is amended to read:

9 "1-12-31. CONDUCT OF ELECTION--DISPOSITION OF BALLOT BOXES  
10 AND OTHER ELECTION MATERIALS. --

11 [~~A. The following election returns and materials~~  
12 ~~shall not be placed in the ballot box and shall be returned~~  
13 ~~immediately to the county clerk along with the locked box:~~

14 (1) ~~one ballot box key in an envelope addressed~~  
15 ~~to the county clerk;~~

16 (2) ~~one signature roster;~~

17 (3) ~~one tally sheet;~~

18 (4) ~~the registration binder;~~

19 (5) ~~all unused election supplies not destroyed~~  
20 ~~pursuant to the Election Code; and~~

21 (6) ~~a machine cartridge for any electronic or~~  
22 ~~marksense machine.]~~

23 A. If marksense or emergency ballots were not used,  
24 those unused ballots and all other unused election supplies that  
25 were not required to be destroyed pursuant to the Election Code

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1 shall be returned immediately to the county clerk, along with  
2 the ballot box.

3 B. In the event marksense or emergency paper ballots  
4 have been voted, the election judge of the party different from  
5 that of the presiding judge shall place one ballot box key in an  
6 envelope addressed to the county clerk and return it to the  
7 county clerk along with the ballot box. The other ballot box  
8 key shall be placed in the envelope addressed to the district  
9 court and immediately ~~mail it~~ mailed to the district court."

10 Section 47. Section 1-12-35 NMSA 1978 (being Laws 1969,  
11 Chapter 240, Section 295, as amended) is amended to read:

12 "1-12-35. CONDUCT OF ELECTION--VOTING MACHINES--CLOSING  
13 POLLS--LOCKING MACHINE.--As soon as the last voter has voted,  
14 the precinct board, in the presence of all persons lawfully  
15 permitted to be present, shall immediately lock and seal the  
16 voting machine against further voting. The precinct board shall  
17 release the five copies of the machine-printed returns from the  
18 machine. The precinct board shall then sign a certificate  
19 stating that the machine was locked and sealed, ~~[giving the~~  
20 ~~exact time]~~ stating the number of ~~[voters shown on the public~~  
21 ~~counters, which shall be the total number of]~~ votes cast on the  
22 machine in that precinct and stating the voting machine serial  
23 number ~~[on the seal; and stating the number registered on the~~  
24 ~~protective counter]. "~~

25 Section 48. Section 1-12-40 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 300, as amended) is amended to read:

2 "1-12-40. CONDUCT OF ELECTION--VOTING MACHINE--DURATION OF  
3 LOCKING AND SEALING.--

4 A. [~~On the voting machine~~] The [~~machine return sheet~~  
5 ~~is~~] machine-printed returns represent the official vote tally  
6 for that precinct.

7 B. If in the district court's opinion a contest is  
8 likely to develop, it may order a voting machine to remain  
9 locked and sealed for such time it deems necessary, which period  
10 of time shall not interfere with or prohibit the use of the  
11 machine at a subsequent election.

12 C. The county clerk shall break the seal or unlock  
13 the machine for purposes of lawful investigation when ordered to  
14 do so by a court of competent jurisdiction, the state  
15 legislature or the governing body of a local government calling  
16 the election. When the investigation is completed, the voting  
17 machine shall again be sealed or locked and across the envelope  
18 containing the keys shall be written the signature of the person  
19 having broken the seal or unlocked the machine. "

20 Section 49. Section 1-12-45 NMSA 1978 (being Laws 1977,  
21 Chapter 222, Section 48, as amended) is amended to read:

22 "1-12-45. EMERGENCY SITUATIONS--EMERGENCY PAPER BALLOTS--  
23 FORM FOR PRIMARY.--

24 A. Emergency paper ballots used in the primary  
25 election by each party shall be set up on the ballot paper as

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1 follows:

2 (1) across the top shall be printed the words,  
3 "OFFICIAL PRIMARY ELECTION BALLOT";

4 (2) on the next line shall be printed the name  
5 of the qualified political party and the date of the primary  
6 election;

7 (3) on the next line shall be printed the name  
8 of the county in which the ballot is used;

9 (4) on the next line shall be printed the  
10 words, "To vote for a person, [~~mark either a cross (X) or a~~  
11 ~~check (V) in the box at] complete the arrow to the right of the  
12 name of each person for whom you desire to vote.";~~

13 (5) thereafter, there shall be printed  
14 consecutively the designated office and to the extreme right of  
15 that same line shall be printed the words, "Vote For", then the  
16 words, "one", "two" or another spelled number designating how  
17 many persons under that office are to be voted for;

18 (6) following and below the designation of  
19 office there shall be printed the name of each candidate for  
20 that office, with [~~a box directly opposite and] an incomplete  
21 arrow directly to the right of the name [~~wherein the voter may~~  
22 ~~make his cross (X) or check (V)] of the candidates. The names  
23 of the candidates shall be printed on equal margin, one under  
24 another, and in the order and manner provided by law. The boxes  
25 following each name shall be of the same size and each shall not~~~~

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1 be more than one-sixth of an inch apart; and

2 (7) the name of each office for which  
3 candidates are to be nominated along with the candidates' names  
4 shall be separated from the succeeding office and list of  
5 candidates on the emergency paper ballot by a heavy black line  
6 to designate that office clearly.

7 B. The emergency paper ballot used in the primary  
8 election shall have no other printing or distinguishing mark on  
9 the ballot, except at the bottom shall appear the facsimile  
10 signature of the county clerk and the words in bold, black type,  
11 "OFFICIAL PRIMARY ELECTION BALLOT".

12 C. Emergency paper ballots used in the primary  
13 election shall be numbered consecutively by party."

14 Section 50. Section 1-12-48 NMSA 1978 (being Laws 1977,  
15 Chapter 222, Section 51) is amended to read:

16 "1-12-48. EMERGENCY SITUATIONS--EMERGENCY PAPER BALLOTS--  
17 NUMBER SUPPLIED. --

18 A. The county clerk shall supply ~~[to each precinct a~~  
19 ~~quantity]~~ an adequate quantity of emergency paper ballots ~~[equal~~  
20 ~~to five percent of the total number of voters in that]~~ to each  
21 precinct. ~~[Such]~~ Emergency paper ballots shall be used only as  
22 provided in Section ~~[3-12-77 NMSA 1953]~~ 1-12-43 NMSA 1978.

23 B. Emergency paper ballots are official ballots and  
24 shall meet the same requirements and safeguards as all other  
25 official ballots."

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[bracketed material] = delete

1           Section 51. Section 1-12-53 NMSA 1978 (being Laws 1977,  
2 Chapter 222, Section 56, as amended) is amended to read:

3           "1-12-53. EMERGENCY SITUATIONS--VOTERS--EMERGENCY PAPER  
4 BALLOT--GENERAL ELECTION--MARKING.--The voter in preparing an  
5 emergency paper ballot in a general election shall:

6           A. if he wishes to vote a straight party ticket,  
7 [~~mark a cross (X) or a check (V) in the circle beneath~~] complete  
8 the arrow to the right of the name of the party, and his vote  
9 shall be considered as having been cast for every candidate  
10 named on the ticket of that party on the ballot, unless he also  
11 votes for one or more candidates in some other column or for  
12 some person whose name is not printed on the ballot;

13           B. if he [~~marks a cross (X) or a check (V) in any~~  
14 ~~circle and also desires to vote for a candidate of another~~  
15 ~~political party (the ticket of which also appears on the ballot)~~  
16 ~~or for any person by write in, mark a cross (X) or a check (V)~~  
17 ~~in the box immediately to the right of the name of the candidate~~  
18 ~~or write in the name of the person for whom he~~] completes the  
19 arrow to the right of the party name and desires to vote [~~in the~~  
20 ~~blank provided therefor and mark a cross (X) or a check (V) in~~  
21 ~~the box immediately to the right thereof, and his vote shall be~~  
22 ~~considered as having been cast for every candidate of the~~  
23 ~~political party below the party name where he marked his cross~~  
24 ~~(X) or a check (V) in the circle~~] for a candidate of another  
25 political party, he shall complete the arrow directly to the

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1 right of the name of the candidate in the blank provided, and  
2 his vote shall be considered as having been cast for every  
3 candidate of the political party to the right of the party name  
4 where he has completed the arrow, except for the candidates for  
5 whom he has otherwise voted; or

6 C. if he wishes, mark the ballot by ~~[omitting the~~  
7 ~~cross (X) or check (V) in the circle and marking a cross (X) or~~  
8 ~~a check (V) in the box immediately to the right of the name of]~~  
9 completing the arrow directly to the right of every candidate or  
10 person for whom he desires to vote, and his vote shall be  
11 considered as having been cast only for the candidate or person  
12 ~~[opposite whose name the cross or check has been marked]~~ who has  
13 a completed arrow opposite his name."

14 Section 52. Section 1-12-54 NMSA 1978 (being Laws 1977,  
15 Chapter 222, Section 57, as amended) is amended to read:

16 "1-12-54. EMERGENCY SITUATIONS--VOTING ON CONSTITUTIONAL  
17 AMENDMENTS AND OTHER QUESTIONS BY EMERGENCY PAPER BALLOT.--If a  
18 constitutional amendment or other question is submitted to the  
19 voters by emergency paper ballot, the voter shall mark his  
20 emergency paper ballot by ~~[making a cross (X) or a check (V) in~~  
21 ~~the box]~~ completing the arrow directly to the right of the box  
22 to indicate he is for or against the proposed amendment."

23 Section 53. Section 1-12-66 NMSA 1978 (being Laws 1977,  
24 Chapter 222, Section 69, as amended) is amended to read:

25 "1-12-66. EMERGENCY SITUATIONS--EMERGENCY PAPER BALLOTS--

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1 SIGNATURE ROSTERS AND TALLY SHEETS- -CHECKLIST OF REGISTERED  
2 VOTERS- - DISPOSITION. - -

3 A. After the counting and tallying of emergency  
4 paper ballots are completed and after all certificates have been  
5 executed, the presiding judge and the two election judges shall  
6 place ~~[one copy of the signature roster]~~ the checklist of  
7 registered voters and one copy of the tally sheet in the  
8 stamped, addressed envelope provided for that purpose, and an  
9 election judge shall immediately mail it to the secretary of  
10 state.

11 B. The ~~[remaining copy of the]~~ signature roster and  
12 the tally sheet shall be returned to the county clerk. The  
13 signature roster and the tally sheet shall not be placed in the  
14 ballot box.

15 C. Signature rosters, checklists of registered  
16 voters and tally sheets in the custody of the county clerk and  
17 the secretary of state may be destroyed three years after the  
18 election to which they apply. "

19 Section 54. Section 1-13-21 NMSA 1978 (being Laws 1971,  
20 Chapter 317, Section 21, as amended) is amended to read:

21 "1-13-21. CLEARING VOTING MACHINES. - -

22 A. Thirty days after adjournment of the state  
23 canvassing board, each county clerk ~~[in the presence of the~~  
24 ~~district judge]~~ or his designated representative ~~[shall open all~~  
25 ~~voting machines of]~~ may publicly, during normal business hours,

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1 erase all voting machine cartridges for the precincts for which  
2 he has not received [~~no~~] a notice by registered mail of a  
3 contest or [~~no~~] a judicial inquiry, and he shall clear [~~such~~]  
4 those machines of all votes that were cast [~~thereon~~] upon them

5 B. The county clerk shall keep locked those voting  
6 machines whereof a recount, judicial inquiry or inspection is  
7 sought, subject to order of the district court or other  
8 authority having jurisdiction [~~of~~] over the contest or  
9 inspection.

10 C. At least three days prior to the opening and  
11 clearing of the voting machines, the county clerk shall notify  
12 the county chairman of each political party participating in the  
13 election of the time, place and date thereof. The chairman of  
14 the political party may be present or may have his [~~accredited~~]  
15 representative present at such opening and clearing.

16 D. Nothing in this section shall prohibit the use of  
17 voting machines in a subsequent election. If the voting machine  
18 must be cleared before the thirty-day period prescribed in  
19 Subsection A of this section for use in any election, the county  
20 clerk shall first obtain an order from the district court for  
21 such clearance. "

22 Section 55. Section 1-15-6 NMSA 1978 (being Laws 1969,  
23 Chapter 240, Section 356, as amended) is amended to read:

24 "1-15-6. PRESIDENTIAL ELECTORS-- ORGANIZATION. --

25 A. Presidential electors of the state shall meet at

1 11:00 a.m. in the office of the secretary of state on the day  
2 fixed by the laws of the United States for presidential electors  
3 to cast their ballots for president and vice president of the  
4 United States.

5 B. At [~~such~~] that meeting, the presidential electors  
6 shall organize by choosing a presiding officer and a secretary.

7 C. If the full number of electors required by law  
8 are not present at [~~such~~] the meeting for any reason, those  
9 presidential electors present shall immediately select as many  
10 replacements as necessary to equal the required number of  
11 electors. In doing so, those electors present shall select from  
12 a list of names nominated by the state chairman of that party  
13 [~~forthwith choose electors from the voters of that state party~~].

14 D. The secretary of state shall provide such  
15 clerical assistance as needed by the presidential electors in  
16 performing their duties. "

17 Section 56. Section 1-16-5 NMSA 1978 (being Laws 1969,  
18 Chapter 240, Section 378, as amended) is amended to read:

19 "1-16-5. STATE CONSTITUTIONAL AMENDMENTS--BALLOT--FORMS  
20 FOR EMERGENCY PAPER BALLOTS AND ABSENTEE BALLOTS. --

21 A. All emergency paper ballots and absentee ballots  
22 proposing constitutional amendments shall have printed thereon  
23 in both English and Spanish the full title of the joint  
24 resolution proposing the constitutional amendment and the  
25 constitutional amendment number assigned to the joint resolution

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1 by the secretary of state. ~~[Below the printed title, there~~  
2 ~~shall be printed on the ballot two one-quarter inch blank boxes.~~  
3 ~~Opposite one of the blank boxes, there shall be printed in both~~  
4 ~~English and Spanish the words "FOR", and opposite the other~~  
5 ~~blank box shall be printed in both such languages the words~~  
6 "AGAINST".] To the right of the text of the proposed amendment  
7 in both English and Spanish the word "FOR" and the word  
8 "AGAINST" shall appear with an incomplete arrow pointing to each  
9 choice.

10 B. There shall be printed across the top of such  
11 ballot the following: "Instructions to voters: ~~[If you desire~~  
12 ~~to vote for the amendment, mark a cross (X) or a check (V) or~~  
13 ~~any other mark clearly indicating intention in the [\_\_?\_\_]~~  
14 ~~opposite the words "FOR". If you desire to vote against the~~  
15 ~~amendment, mark a cross (X) or a check (V) or any other mark~~  
16 ~~clearly indicating intention in the [\_\_?\_\_] opposite the words~~  
17 "AGAINST".] To vote, complete the arrow pointing to your  
18 choice"."

19 Section 57. REPEAL. -- Sections 1-2-13, 1-6-21, 1-6-22,  
20 1-6-24, 1-12-32 and 1-12-34 NMSA 1978 (being Laws 1969, Chapter  
21 240, Section 33, Laws 1975, Chapter 255, Section 93, Laws 1969,  
22 Chapter 54, Sections 4 and 5 and Laws 1969, Chapter 240,  
23 Sections 292 and 294, as amended) are repealed.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 18, 1997

Mr. President:

Your RULES COMMITTEE, to whom has been referred

SENATE BILL 642

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Gloria Howes, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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[bracketed material] = delete

(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Aragon, Rodarte, Stockard

Absent: None

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[bracketed material] = delete